

APPEAL NO. 032059
FILED SEPTEMBER 23, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 16, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____; that the claimant had disability from March 1, 2003, and continuing through the date of the hearing; and that the appellant (carrier) has waived the right to contest compensability of the claimed injury by not paying or disputing the claim within seven days in accordance with Sections 409.021 and 409.022. The carrier appealed, and the file does not contain a response from the claimant.

DECISION

Affirmed as reformed.

The hearing officer acknowledged that the claimant sustained damage or harm to his left knee, but he was not persuaded that the damage or harm was sustained on _____, while the claimant was in the course and scope of his employment. The hearing officer additionally determined that due to the above-mentioned left knee injury, the claimant has been unable to obtain or retain employment at wages equivalent to his preinjury wage beginning on March 1, 2003, and continuing through the date of the hearing. Finally, the hearing officer determined that the claimant's otherwise noncompensable left knee injury is compensable as a matter of law because the carrier failed to initiate the payment of benefits or dispute the claimed injury within seven days as required by Sections 409.021 and 409.022. The hearing officer determined that because the injury is compensable as a matter of law, the claimant did have disability for the above-mentioned period of time.

The carrier first contends that there is no waiver in this case because it received first written notice of the claim on February 26, 2003, and electronically filed with the Texas Workers' Compensation Commission (Commission) a "cert-21" on February 27, 2003, in which it certified that benefits would be paid as they accrued. Also in evidence was a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated March 3, 2003. The TWCC-21 is file stamped as being received by the Commission on March 7, 2003, and it disputes the claim. Finally, the claimant introduced computer records from the Commission, which shows that the TWCC-21 was received on March 7, 2003. The hearing officer determined that the carrier failed to establish to whom the "cert-21" was sent or whether it was received by anyone at all. The carrier contends that a stamped copy is not the only evidence that can establish a timely contest, citing Texas Workers' Compensation Commission Appeal No. 960671, decided May 17, 1996. Based upon the evidence before him, the hearing officer determined that the carrier failed to establish that it initiated payment of benefits or disputed the claim within seven days. Whether or not the carrier timely initiated benefits

or disputed the claim is a question of fact for the hearing officer to resolve. In the instant case, the hearing officer determined that based upon the evidence presented, the carrier failed to establish that it acted within seven days, and therefore waived the right to contest compensability. Upon review of the record in this case, we cannot say that the hearing officer erred in reaching this determination.

The carrier next asserts that there should be no waiver because no benefits were due prior to the time it filed the TWCC-21 disputing the claim. The Appeals Panel has previously addressed, and rejected, this argument. See Texas Workers' Compensation Commission Appeal 030380-s decided April 10, 2003.

Finally, the carrier asserts that the seven-day "pay or dispute" provision contained in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), does not apply to the facts of this case. In support of its position, the carrier asserts that the claimant sustained no injury at all, and the carrier's failure to contest compensability cannot create an injury as a matter of law. The carrier's appeal cites Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.), in support of its position that the hearing officer erred in determining that the claimant does have a compensable injury.

In the Downs case, the Texas Supreme Court determined that under Sections 409.021 and 409.022, a carrier that fails to begin benefit of payments as required by the 1989 Act or send a notice of refusal to pay within seven days after it receives written notice of injury has not met the statutory requisite to later contest compensability.

In Williamson, the court held that "if a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier's failure to contest compensability cannot create an injury as a matter of law." The Appeals Panel has previously recognized that Williamson is limited to situations where there is a determination that the claimant did not have an injury, that is, no damage or harm to the physical structure of the body, as opposed to cases where there is an injury which was determined by the hearing officer not to be causally related to the claimant's employment. Texas Workers' Compensation Commission Appeal No. 020941, decided June 6, 2002. In Texas Workers' Compensation Appeal No. 000604, decided May 10, 2000, the Appeals Panel stated:

We have interpreted Williamson to mean that a carrier's failure to timely dispute does not create an injury only when there is no injury. If the claimant has established a condition that meets the definition of injury under Section 401.011(26), it does not matter that the cause of the injury may be outside the course and scope of employment because causation is no longer in dispute when a TWCC-21 has not been timely and properly filed.

In the instant case, the claimant claimed a left knee injury from performing a work activity. The hearing officer found that the claimant was not injured in the course and

scope of his employment; he did not find that the claimant has no injury. The carrier contends that the hearing officer's finding that "[o]n February 13, 2002, the Claimant did not sustain damage or harm to the physical structure of his body, to-wit: his left knee" requires reversal of the carrier waiver determination. We disagree. The hearing officer's finding that no damage or harm was sustained on _____, does not necessitate reversal of the conclusion that the carrier waived the right to contest compensability of the claimed injury. In Texas Workers' Compensation Commission Appeal No. 030275, decided March 17, 2003, we noted that the Appeals Panel does not interpret Williamson to require proof of damage or harm on the specific date alleged. In fact, the hearing officer in his Statement of the Evidence commented that the evidence supports the claimant's contention that he did suffer damage or harm to his left knee, and that as a result of the claimant's left knee injury, he has been unable to obtain and retain employment at wages equivalent to his preinjury wage from March 1, 2003, through the present. Thus, we conclude that Williamson does not apply to the facts of this case because the claimant has physical harm or damage to his left knee.

Based on the clear discussion of the hearing officer and the medical evidence in the record we reform Finding of Fact No. 2 to read as follows: The claimant sustained damage or harm to the physical structure of his body, to-wit: his left knee.

We affirm the decision and order of the hearing officer as reformed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge